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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,593

05/17/2004

Reiner Kreyenkamp

604041

3592

30008 7590 08/27/2008

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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

08/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/709,593	Applicant(s) KREYENKAMP, REINER	
	Examiner TIMOTHY M. AYRES	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/13/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,8,10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,8,10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/13/08 has been entered.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 5, 6,8, 10, 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 recites the phrase "a size providing a finger protection preventing fingers from being pinched" is indefinite since it relates to an infinitely variable size, (fingers and a sufficient extra dimension to then prevent pinching). It is indefinite since it is unclear as to what the metes and bounds of the claim are finger protection from being pinched. The specification does not provide a standard for what is considered sufficient space to prevent fingers from being pinched. There aren't any dimensions, the metes and

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bounds of the claim are unclear, sufficient size for a toddler is very different than sufficient size for a larger adult. The specification does not provide a range for this, a potential infringer would not readily decipher the low end of the range or the upper end, i.e. do they infringe when their gap is 1/2 inch, 1 inch, 3 inches? The finger is not a constant unit of measure to base a gap size on, further it is unclear as to what dimensions needed add to the finger to than be a *sufficient* size to prevent pinching. While the examiner understands that there are standard ring sizes and glove sizes there still are numerous people who require custom ring sizes and glove sizes. For examination purposes any gap size is considered sufficient to meet the claim language and is considered capable of providing the function of finger protection since such is a result of more than just gap size, i.e. the opening size of the cabinet relative to the size of the drawer is relevant.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5, 6, 8, 10, and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,199,966 to Fulterer in view of US Patent 3,146,048 to Graham. Fulterer teaches a tall cabinet (1) with a pullout device. The pullout device comprises upper and lower pullout rails (28, 39). A frame (40) moves on the guide parts.

Shelf members (45) are connected to the frame. The frame is composed of a vertical longitudinal front support (41) to support a cabinet door (29) and a vertical longitudinal rear support (42). When the pullout device is in the extend position as seen in figure 26, a gap is formed between the vertical longitudinal rear support and the opening plane of the cabinet body. A first locking mechanism includes hooks and openings as described in column 9, lines 5-65 and figures 17-23, which blocks return movement of the frame when it is the extended position.

6. Fulterer does not expressly disclose the frame pivoting and the details of the mechanism to allow the pivoting. Graham teaches a cabinet (12) with a frame (10) and door (14) supported by pullout rails (24). Bearings (78,88,84) connect the frame to the guide parts. A second locking device (80, 100,112,22,114) lock the rotation of the frame by using notches (82) that allow the frame to pivoted to stepped pivot positions that are 90 degrees up or down, 45 degrees up or down, and a central position. A first locking mechanism (34,38,40,20,50,56, 52, 46) comprises a spring (50) forcing pins (34,38) to lock the guide parts (24) in the extended position or a storage position. While the frame is in the rotated position, the pins (34,38) would not be able to be unlocked since the release mechanism (20,58,52) would not be aligned with rod (46) which acts on the pins (34,38) and thereby preventing the frame to withdraw into the cabinet while the frame is pivoted. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the pullout device of Fulterer by adding the pivot apparatus including locking mechanism to both the upper and lower guides as taught by Graham to permit rotation of the frame to facilitate access the contents of the frame while

allowing the device to be locked and unlocked safely and with a minimum amount of force. Please note that when the pivoting mechanism of Graham is added the tall cabinet of figure 26 of Fulterer there is considered to be sufficient space between the shelf (45) and the side of the cabinet to prevent finger pinching. This is due to the pivoting mechanism being rotated about the midpoint of the shelf and as the shelf rotates the gap while expand.

Response to Arguments

1. Applicant's arguments filed 6/13/08 have been fully considered but they are not persuasive. Regarding the 112 rejections, the examiner still considered one of ordinary skill in the art to not recognize what size gap is needed to meet the claim limitations. While there may be guidelines and statistical ranges for an adult finger sizes, this is not appropriate for claim language; the human body is to not be claimed and would receive a 101 rejection if it is done in a positive manner. Furthermore there is nothing in the claim or specification that these "fingers" are of an average adult. A gap should be defined by structure or dimensions. No dimensions have been given and the human body can not be considered structure, therefore the claim is still considered indefinite. In regards to the 103 rejection, Graham's locking pin does lock the frame when the frame is in the fully extended position and once pivoted from this position, the pin remains locked since the release mechanism for the pin requires alignment for a user to remove the pin and allow return movement. While the claims have been amended they have not changed the rejections and therefore this action is being made final.

Conclusion

2. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **TIMOTHY M. AYRES** whose telephone number is (571)272-8299. The examiner can normally be reached on **MON-THU 8:00 - 5:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M. A./
Examiner, Art Unit 3637
8/25/2008

/Janet M. Wilkens/
Primary Examiner, Art Unit 3637